



UNIVERSITY OF  
**TORONTO**  
FACULTY OF LAW



**LAW AGAINST DISCRIMINATION:  
COMPARATIVE AND THEORETICAL PERSPECTIVES  
ON GENDER AND SEXUALITY,  
RACE AND RELIGION,  
CLASS, AGE AND DISABILITY**

**INTENSIVE COURSE**

**Professor Dr. Susanne Baer, LL.M.**

**Fall 2007**

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14 hrs a 2	Issue	Goals	Topics	Material	Task
1	Comparative Constitutionalism - Conflicts around the world	<ul style="list-style-type: none"> <li>Understand comparative methods</li> <li>Understand the challenge of gender</li> </ul>	<ul style="list-style-type: none"> <li>information on exams, course requirements</li> <li>Comparative Constitutionalism</li> <li>Conflicts:</li> <li>Headscarves</li> <li>Affirmative Action</li> <li>Transsexuality</li> </ul>	<ul style="list-style-type: none"> <li>Dorsen/Rosenfeld/Sajo/Baer, Comparative Constitutionalism, 1-16</li> <li>Cossmann, Turning the Gaze Back on Itself, Utah Law Review 525 - 543 (1997)</li> </ul> <p>Facts:</p> <ul style="list-style-type: none"> <li>Headscarves</li> <li>Affirmative Action</li> <li>Transsexuality</li> </ul> <p>Further readings</p> <ul style="list-style-type: none"> <li>Baer, Dignity or Equality? Responses to Workplace Harassment in European, German, and U.S. Law, 582 - 595, in: Directions in Sexual Harassment Law, MacKinnon/Siegel (eds.)</li> </ul>	<ul style="list-style-type: none"> <li>Read texts</li> <li>Develop lead questions for comparative legal thinking</li> <li>Understand and analyse cases</li> </ul>
2	Gender etc in law	<ul style="list-style-type: none"> <li>Understand conflicts from critical perspective relating to ground of discrimination</li> <li>Understand equality</li> </ul>	<ul style="list-style-type: none"> <li>how to deal with equality: comparison-based (Aristotelian) or substantively equality?</li> <li>what is the theoretical concept of intersectionality</li> <li>what is multiple discrimination</li> <li>do we need a comparison to review treatment?</li> </ul>	<ul style="list-style-type: none"> <li>Fredman, Sandra, Double-trouble: multiple discrimination and EU law, EU-Antidiscrimination Law Review, 13 - 18</li> <li>First European Conference on Multidimensional Equality Law in the EU, summary and results, 1-7, Abstracts 1-14</li> </ul> <p>Further readings</p> <ul style="list-style-type: none"> <li>Ruiz/ Sacksosky, Gender in the German Constitution, 149 -174 in: Baines/Marin, The Gender of Constitutional Jurisprudence, 2005</li> <li>Baines/ Rubio-Marin, Introduction: Toward a Feminist Constitutional Agenda, pp. 1- 16, in: Baines/Marin</li> </ul>	Read texts



					<ul style="list-style-type: none"><li>▪ Holzleithner, Mainstreaming Equality: Dis/Entangling Grounds of Discrimination, 953 - 957</li></ul>	
3	History of EU equality law	<ul style="list-style-type: none"><li>▪ Get to know EC, Directives</li><li>▪ Get to know ECHR</li><li>▪ Understand structure and character of EU equality law</li></ul>	1.Generation <ul style="list-style-type: none"><li>▪ Nationality in EU</li><li>▪ Sex equality 1970er</li></ul> 2. Generation <ul style="list-style-type: none"><li>▪ Gender Directives – 2000</li><li>▪ ECHR</li><li>▪ Perspectives</li></ul> ADL - 3. Generation? <ul style="list-style-type: none"><li>▪ Human Right based - ADL?</li><li>▪ Mainstreaming equality</li></ul>	<ul style="list-style-type: none"><li>▪ Hoskyns,, The EU and the Women within pp. 13-23, in Elman (ed.), Sexual Politics and the EU</li><li>▪ Baer, “The End of private Autonomy” or Rights-based Legislation? The Anti-discrimination Law Debate in Germany, 323 – 333, in: Annual of German &amp; European Law, 2003</li><li>▪ Directive 2004/113/EC (Reader)</li><li>▪ Directive 2000/43/EC (Reader)</li><li>▪ Directive 2000/78/EC</li><li>▪ Directive 2002/73/EC</li><li>▪ Directive 2006/54/EC(recast)</li></ul>	Read texts Read regulations	
4	European Actors in Contexts	<ul style="list-style-type: none"><li>▪ Understand EU system of actors: COM</li><li>▪ Understand multi-level law making</li><li>▪ Understand ECJ and ECHR</li></ul>	<ul style="list-style-type: none"><li>▪ lawmaker</li><li>▪ relations between eu commission, parliament and council</li><li>▪ what does the ECJ do: Enforcement of EU Legislation, (directives, coherency..)</li><li>▪ what does the ECtHR do</li></ul>	<ul style="list-style-type: none"><li>▪ Jacobs, The European Convention on Human Rights, the EU Charter of Fundamental Rights and the European Cort of Justice, pp. 291-297, in Pernice/Kokott/Saunders (eds.) Future of the Europ. Judicial System</li><li>▪ De Schutter, The Prohibition of Discrimination under European Human Rights Law; pp. 11 – 24, in:European Network of Legal Experts ...</li><li>▪ COM v. Germany Rili 2000/78/EG, EuGH C-43/05</li></ul> <p>Further readings:</p> <ul style="list-style-type: none"><li>▪ Elman, Introduction: The EU from Feminist Perspectives, pp. 6-12, in Elman (ed.)</li><li>▪ Eriksen/Fossum/Menendez, The Chartering of Europe, 17-30</li></ul>	<ul style="list-style-type: none"><li>▪ Read texts</li><li>▪ Imagine EU law making and EU human rights protection</li><li>▪ Contrast with Canadian lawmaking and human rights protection</li></ul>	
5	EU equality	Get to know EU policies	<ul style="list-style-type: none"><li>▪ EYEO,</li></ul>	<ul style="list-style-type: none"><li>▪ Framework strategy (Equality Non-</li></ul>	<ul style="list-style-type: none"><li>▪ Read documents</li></ul>	

	politics and law in 2007	Understand GM, MD, ADM	<ul style="list-style-type: none"> <li>Roadmap (2006)</li> <li>Framework strategy</li> <li>Community action programme to combat discrimination (2001 to 2006)</li> <li>EQUAL - first round (2000) + second round (2003)</li> <li>Charter</li> <li>ADL 2000 - 2007</li> </ul>	<ul style="list-style-type: none"> <li>discrimination) COM(2005) 224</li> <li>Roadmap for equality between women and men COM(2006) 92 final</li> <li>Year of Equal Opportunities for all, Decision 771/2006/EC</li> <li>Community action programme to combat discrimination 2001-2006 2000/750/EC</li> <li>EQUAL - first round (2000) + second round (2003)</li> <li>Framework strategy EU Parliament Resolution (A6-0189/2006)final</li> <li>Green Paper Equality and non-discrimination COM(2004)379 final</li> </ul>	<ul style="list-style-type: none"> <li>Compare to Canadian equality politics</li> <li>Compare to your own vision of equality politics</li> </ul>
6	Conflicts around the world	<ul style="list-style-type: none"> <li>Analyse conflicts from EU law perspective</li> <li>Discuss from comparative perspective</li> </ul>	<ul style="list-style-type: none"> <li>Headscarves</li> <li>Affirmative Action</li> <li>Transsexuality</li> </ul>	<p>Decisions</p> <p>Headscarves:</p> <ul style="list-style-type: none"> <li>FCC – 2 BvR 1436/02 – Ludin v. Baden Württemberg</li> <li>ECtHR Leyla Sahin v. Turkey, 44774/98 (2005)</li> <li>ECtHR Dahlab v. Switzerland, 42393/98 (2001)</li> <li>Canada, Bhinder v. Canadian Railway [1985] 2 S.C.R. 561</li> </ul> <p>Affirmative Action:</p> <ul style="list-style-type: none"> <li>ECJ Marshall v. NRW C – 409-95 (1997) Dorsen et al. 738 - 743</li> <li>ECJ Badeck C- 158/ 97 (2000)</li> <li>ECJ Abrahamsson C-407/98 (2000)</li> <li>U.S. SC: University of California v. Bakke U.S. 438 U.S. 265 (1978) Dorsen et al., 724 – 733</li> <li>U.S. SC: Parents v. Seattle, ( 2007)</li> </ul> <p>Transsexuality:</p> <ul style="list-style-type: none"> <li>ECtHR van Kück v. Germany 35968/97</li> <li>ECtHR Sheffield &amp; Horsham v. UK (1998) Dorsen et al., 576 - 583</li> <li>ECJ K.B., C-117/01 (2004)</li> </ul>	<ul style="list-style-type: none"> <li>Read cases</li> <li>Develop a position on drawing national, comparative, even international legal arguments</li> </ul>

					<ul style="list-style-type: none"><li>▪ EJC, Grant v. South-West Trains Ltd, C-249/96</li></ul> <p>Further readings:</p> <ul style="list-style-type: none"><li>▪ Whittle, Transgender Rights, 201-216, in Hegarty/Leonard(eds.) 1999</li></ul> <p>Affirmative Action:</p> <ul style="list-style-type: none"><li>▪ ECJ North Western Health Board v. McKenna, C-191/03 (2005)</li></ul> <p>Transsexuality:</p> <ul style="list-style-type: none"><li>▪ ECJ(First Chamber), Richards v. Sec. of State, C-423/04 (2006), at</li></ul>	
7	Equality compared	<ul style="list-style-type: none"><li>▪ Analysis equality based on knowledge on EU and Canada</li></ul>	<ul style="list-style-type: none"><li>▪ Equality</li><li>▪ Conflicts</li><li>▪ Legal strategies</li></ul>	<ul style="list-style-type: none"><li>▪ Cases</li><li>▪ Tobler, Changing the equality paradigm: the example of the Canadian approach, 2003</li></ul>	<ul style="list-style-type: none"><li>▪ case analysis</li><li>▪ consider SCC, Andrews v. Law Society of British Columbia (1989)</li></ul>	



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